

IN THE IOWA DISTRICT COURT FOR MONTGOMERY COUNTY

STATE OF IOWA, ex rel., IOWA)	LAW NO. <u>CV019747</u>
DEPARTMENT OF NATURAL)	
RESOURCES (99AG23542),)	
)	
Plaintiff,)	
)	
vs.)	PETITION AT LAW
)	
DEAN GETTLER,)	
)	
Defendant.)	

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (hereafter DNR) and for its claim against Defendant Dean Gettler (hereafter Gettler) states as follows:

INTRODUCTION

1. All animal feeding operations, except small animal feeding operations, must file a manure management plan that meets environmental requirements. Manure management plans protect the environment by insuring that an operation has adequate land available for the application of the manure nutrients. Adequate land, in turn, insures that the manure is not over applied and thereby avoids manure runoff into the waters of the State.

Although the vast majority of feeding operations comply with manure management plan requirements, a few operators have failed to file manure management plans. Defendant Dean Gettler failed to submit a manure management plan for his hog confinement facility in Montgomery County. As a result, Gettler applied manure without an approved manure management plan in place. The State of Iowa now seeks civil penalties, issuance of a permanent injunction, and collection of an administrative penalty against Gettler for these violations.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant Dean Gettler resides at 1390 - 140th Street, Emerson, Montgomery County, Iowa.

JURISDICTION

5. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

6. The owner of a confinement feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

7. All persons required to submit a manure management plan to the department shall also pay to the department an indemnity fee except those operations constructed prior to May 31, 1995, which were not required to have a construction permit. Iowa Code § 459.503; 567 Iowa Admin. Code 65.16(6). Any person submitting an original manure management plan must also pay to the department a manure management plan filing fee of \$250.00, which shall be included with each original manure management plan being submitted. Iowa Code § 459.316(1)(b); 567 Iowa Admin. Code 65.16(7).

8. Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required, until the DNR has approved the manure management plan. Iowa Code § 459.312(5); 567 Iowa Admin. Code 65.16(5).

9. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the manner provided in chapter 455B, division I, unless otherwise provided. Iowa Code § 459.103(3).

10. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

11. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

12. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (hereafter EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

13. The Attorney General is authorized under Iowa Code section 455B.109(3), on request of the DNR, to institute summary proceedings to recover the penalty and any accrued

interest where a penalty has been assessed by the DNR in a final administrative order but remains unpaid.

FACTS

14. On August 15, 2005, the EPC voted to refer the matters described in paragraphs fifteen (15) through nineteen (19) below to the Attorney General for purposes of initiating judicial enforcement against this defendant.

15. Defendant Dean Gettler owns and operates a confinement feeding operation for swine located in Section 10, Garfield Township, Montgomery County, Iowa. The facility consists of three (3) buildings with a total animal unit capacity of 540. Manure is stored in concrete below-building pits.

16. On May 25, 2004, DNR officials conducted an inspection of the defendant's facility. DNR officials discovered that the facility was constructed in 1999. The defendant had not submitted a manure management plan and had not paid any of the applicable fees.

17. On June 9, 2004, the director of the DNR issued Administrative Order No. 2004-AFO-54 to the defendant, a copy of which is attached, marked as Exhibit A and incorporated by reference. The Order required the defendant to submit a complete manure management plan and fees within 45 days of receipt of the Order. Administrative Order No. 2004-AFO-54 also assessed an administrative penalty of Three Thousand Dollars (\$3,000.00), pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10.1 - 10.3. The defendant received a copy of the Order on June 24, 2004, as shown by the return receipt, a copy of which is attached, marked as Exhibit B and incorporated by reference. The defendant appealed. On April 1, 2005, a Notice of Hearing was issued by the Department of Inspections and Appeals, requiring the

defendant to file a petition within 20 days of receipt of the Notice. When the defendant failed to file the petition an Administrative Law Judge dismissed the appeal on May 20, 2005.

18. The defendant failed to submit a manure management plan and applicable fees to the department. The defendant has continued to land apply manure without an approved manure management plan.

19. The defendant has failed to pay the administrative penalty referenced in paragraph seventeen (17).

VIOLATIONS

20. The defendant has failed to submit an approvable manure management plan and applicable fees in violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(6), 65.16(7), and Administrative Order No. 2004-AFO-54.

21. The defendant has continued to land apply manure without an approved manure management plan in violation of Iowa Code section 459.312(5) and 567 Iowa Admin. Code 65.16(5).

22. The defendant has failed to pay the administrative penalty referenced in paragraph seventeen (17), even though the time for payment has passed, or any accrued interest in violation of Administrative Order NO. 2004-AFO-54.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant Dean Gettler, pursuant to Iowa Code section 455B.191(1), for each day of violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6), 65.16(7); and Administrative Order No. 2004-AFO-54, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

b. issue a permanent injunction ordering Defendant Dean Gettler to submit an approvable manure management plan and pay the applicable fees, and further enjoining Defendant Dean Gettler from any violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6), 65.16(7), and Administrative Order No. 2004-AFO-54; and

c. order that the defendant Dean Gettler pay the administrative penalty assessed in Administrative Order No. 2004-AFO-54, and accrued interest, pursuant to Iowa Code section 455B.109(3).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General


TIMOTHY D. BENTON, PK1000349
Assistant Attorney General
Environmental Law Division
Lucas State Office Bldg., Gr. Floor
321 E. 12th Street, Room 018
Des Moines, Iowa 50319
Phone: (515) 281-6637
Fax: (515) 242-6072
E-mail: tbenton@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF

Kelli Book

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

Dean Gettler South Place – ID #63029
Section 10, Garfield Township
Montgomery County, Iowa

ADMINISTRATIVE ORDER
NO. 2004-AFO-54

TO: Dean & Sharon Gettler
1390 140th Street
Emerson, IA 51533-6008

VIOLATION: 567 IAC 65.16(1)“b”. You failed to submit a manure management plan (MMP) to the Department.

ORDER: You shall submit your complete MMP and fee to Department Field Office #4 within 45 days of your receipt of this Order. In addition, a penalty of \$3,000.00 is assessed effective 30 days from your receipt of this Order, and shall be paid to the Department (address at bottom of Order) within 60 days of receipt of this Order, unless you appeal as provided below. \$500.00 of this amount is based on economic benefit for avoiding past fees and costs of complying with MMP requirements. \$1,500.00 of this amount is based on the gravity of the violation, considering the size of this facility, extensive agency efforts in detecting and addressing this violation, and the importance of the animal feeding operation program. \$1,000.00 of this amount is for culpability; the MMP requirements have been widely publicized in the industry and ample time for compliance was allowed.

AUTHORITY: Iowa Code §455B.109, §459.103(3), 567 IAC 10.3, 65.16(1)“b”.

APPEAL: Iowa Code §455B.109, 561 IAC 7.5(1) A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Kelli Book at (515) 281-8563 for more information regarding appeal procedures and resolution of this Order.

NONCOMPLIANCE: If you fail to comply with this Order you may be subject to further penalties pursuant to Iowa Code §455B.109 or penalties and injunction pursuant to Iowa Code §455B.191 and §459.603.



JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9 day of

June, 2004

Wallace State Office Building; 502 East Ninth Street; Des Moines, Iowa 50319

RECEIVED

EXHIBIT A

JUN 14 2004

19 RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

DEAN & SHARON GETTLER
1390 140TH STREET
EMERSON IA 51533-6008

4a. Article Number

7003 1680 0000 3172 6248

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

06/24/04

5. Received By: (Print Name)

Dean Gettler

6. Signature: (Addressee or Agent)

X Dean Gettler

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.